

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2109 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

RABARI MOTI MAVJI

Appearance:

MR A.J.Desai, for the Petitioner

Mr.D.S.Vasavada for the respondent

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 10/10/96

ORAL JUDGEMENT

The petitioner State has challenged the award of the Presiding Officer, Labour Court, Rajkot dated 22-8-1983 given in Ref.No.(ICR) 488 of 1982. The Reference was between the Range Forest Officer, Dhrangadhra and the respondent-workman Rabari Moti Mavji.

2. A copy of the award is at Annexure-A page 6. In

para 3, it is noted that, according to the workman, he had worked for more than 5 years as a watchman and was being paid salary of Rs.206/- per month. Suddenly, on 7-1-1982, he was discharged without any ground, without any inquiry or even notice. Needless to say, he was not paid any compensation.

3. The petitioner State through said Range Forest Officer, seems to have filed its reply at Exh.4 before the trial Court. The stand taken is to the effect that the workman was appointed on daily wages, as watchman and he is not entitled to notice pay. As the service of the workman was no more required, he was told not to report for duty on 7th January 1982. This stand is taken on the basis that, for a daily-wager, eventhough he is a Government servant, no notice is required. This is categorically stated in para 4, page 6 of Annexure-A.

4. During the course of hearing before the Tribunal, no one appeared on behalf of the petitioner-State, though a notice was served informing them of the date of hearing and its acknowledgment was verified by the Presiding Officer of Labour Court, Rajkot, to be on record at Exh.9. The matter has, therefore, remained uncontested on merits except for filing of said written statement Exh.4. The grounds taken in the petition are (1) that notice was sent at the old address of the office of the Range Forest Officer and (2) that Industrial Disputes Act would not apply. There is nothing to suggest that, if at all there is any change of address, it was ever intimated to the trial Court. This grievance, therefore, cannot be sustained. The petitioner certainly would have a ground to urge, provided, care was taken to inform the Tribunal as to the change of address.

5. The aforesaid 2nd ground as to non applicability of Industrial Disputes Act was neither raised before the Conciliation Officer nor before the Tribunal as could be gathered from Annexure-A page 6, the award. Examining this question on merit, would mean that if the Industrial Disputes Act is not applicable, the workman being a Government servant, atleast BCSR would apply and as could be seen from para 6 & 7 of the award, the workman had worked from 1976 to 7-1-1982. If this be so, the workman having worked continuously as a watchman in the aforesaid Department of the State Government for more than 4 years, atleast, under BCSR Rule 31, he was entitled to a notice. No such notice has been given.

6. If the issue of non application of I.D.Act is taken into consideration, it would merely mean that the

Court had no jurisdiction. Dispute as to jurisdiction has to be taken at first available opportunity. If this is not taken and if the issue is to be taken afresh either in appeal or in any other available remedy before the higher forum, it will have to be established that prejudice is caused. This being not the position here, in my opinion, the petitioner cannot be heard to raise this plea. Even on merit, there is no substance as to this plea because the respondent under I.D. Act would be entitled to protection because of the length of service and if that Act does not apply; while exercising jurisdiction under Article 227 of the Constitution of India, this Court will certainly see whether any other applicable provision would have bearing on the dispute between the parties or not. The relevant provision being B.C.S. Rule 31, in absence of notice being given to the petitioner, the termination is bad. In either event, the order of dismissal cannot be sustained.

7. In view of the aforesaid position, the Tribunal has rightly granted the Reference in favour of the workman and ordered reinstatement with 75% backwages.

8. In the result, the petition fails and is dismissed. The award (Annexure -A) is confirmed. Rule is made absolute.
